

STATE OF SOUTH CAROLINA

(Caption of Case)

FLATEL, Inc., Complainant/Petitioner

v.

Verizon South, Inc., Defendant/Respondent-

Verizon South, Inc.'s

Motion to Dismiss

COPY

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER:

2007

SC PUBLIC SERVICE
COMMISSION

2007 OCT 12 PM 3:56

RECEIVED

(Please type or print)

Submitted by: Steven W. Hamm, Esq.

SC Bar Number: 2634

Telephone: 803-771-400

Fax: 803-799-0016

Other:

Address: 1900 Barnwell Street

P.O. Drawer 7788

Columbia, SC 29202

Email: shamm@richardsonplowden.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: Dismissal of Complainant/Petitioners Complaint

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|----------------------------------------------------|------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input checked="" type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Oder | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

October 12, 2007

Via Hand Delivery

The Honorable Charles L. A. Terreni
Chief Clerk and Administrator
The Public Service Commission of S.C.
P. O. Drawer 11649
Columbia, S.C. 29211

RE: FLATEL, Inc., Complainant/Petitioner v. Verizon South Inc., Defendant/Respondent -
Verizon South Inc.'s Motion to Dismiss

Dear Mr. Terreni:

Enclosed for filing are an original and one copy of Verizon South Inc.'s ("Verizon")
Motion to Dismiss in the above referenced matter.

By copy of this letter, I am serving all parties of record with a copy of the Motion as
indicated on the attached Certificate of Service.

If you should have any questions concerning this matter please contact my office.

With kind personal regards, I am

Sincerely,



Steve W. Hamm
C. Jo Anne Wessinger Hill

Enclosures

cc: Ms. Jeffrey M. Nelson, Esquire (ORS)
Mr. Abby Matari, CEO (FLATEL, Inc.)

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2007-326-C

IN RE: FLATEL, INC.)	
Complainant/Petitioner)	
)	
)	MOTION TO DISMISS
)	OF VERIZON SOUTH INC.
)	
VERIZON SOUTH INC.)	
Defendant/Respondent)	

VERIZON’S MOTION TO DISMISS

Verizon South Inc. (“Verizon”) moves that the complaint of FLATEL, Inc. (“FLATEL”) be dismissed because (i) the complaint is not signed by a South Carolina attorney and otherwise does not comply with the Commission’s pleading requirements; and (ii) FLATEL has failed to comply with the dispute resolution process set forth in the parties’ interconnection agreement (“Agreement”). The grounds for Verizon’s motion are set forth in more detail below.

Under the Commission’s Rules of Practice and Procedure, only two classes of persons may act in a representative capacity before the Commission: (a) an individual representing himself or herself or (b) an attorney authorized to practice in South Carolina. PSC Rule 103-804 T.(1). A regulated company thus may not appear pro se before the Commission, but must be represented by counsel. FLATEL fails to meet this requirement because its complaint is not signed by an attorney, but rather by its chief executive officer. Moreover, although complaints are required to provide “[a] concise and cogent statement of the factual situation surrounding the complaint,” PSC Rule 103-824, the letter complaint filed by FLATEL makes a number of vague, disjointed and

inconsistent allegations. An individual representing himself or herself may at times be given more leeway in its pleadings, but FLATEL, which should have been represented by counsel, may not take such a cavalier approach. Its complaint should be dismissed on this ground alone.

The complaint also should be dismissed because FLATEL has failed to comply with the dispute resolution provisions of the Agreement. FLATEL filed its complaint with the Commission after Verizon sent FLATEL a notice of default dated August 10, 2007 citing FLATEL's failure to pay or dispute charges in the amount of \$257,482.80.¹ Because FLATEL now has disputed the charges, Verizon has continued to accept and process FLATEL's service orders for South Carolina customers and has not sought to discontinue the services being provided to FLATEL in South Carolina. The next step should be for FLATEL to pursue dispute resolution under the Agreement, which provides that if FLATEL has a good faith dispute concerning any amount billed by Verizon, FLATEL must give notice to Verizon of the amounts it disputes, including the "specific details and reasons for disputing each item." (Agreement § 9.1.)² FLATEL also must designate a business representative to undertake good-faith negotiations in effort to resolve the dispute within forty-five days. (Agreement § 14.1.) If the parties are unable to resolve the dispute through such negotiations, then either party may pursue appropriate legal action. (Agreement § 14.2.) FLATEL should be required to comply with these provisions before bringing a complaint to the Commission, and accordingly its complaint should be dismissed for this additional reason.

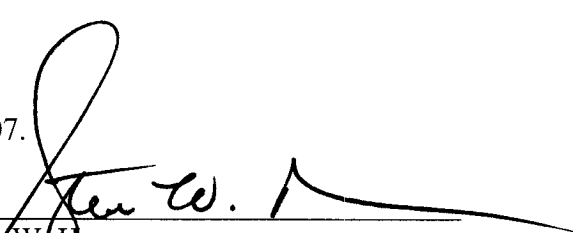
¹ A true and correct copy of the August 10, 2007 letter is attached hereto as Exhibit A.

² Excerpts from the Agreement are provided in Exhibit B attached hereto.

For the foregoing reasons, Verizon respectfully requests that FLATEL's complaint be dismissed.

Respectfully submitted on October 12, 2007.

By:



Steven W. Hamm
C. Jo Anne Wessinger Hill
Richardson, Plowden, Carpenter &
Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29202
Tel: (803) 771-4400
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Dulaney L. O'Roark III
General Counsel
Verizon
5055 North Point Parkway
Alpharetta, GA 30022
Tel: (678) 259-1449
Fax: (678) 259-1589

Counsel for Verizon South Inc.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-326-C

IN RE: FLATEL, Inc.)	
Complainant/Petitioner)	
)	CERTIFICATE OF SERVICE
v.)	
)	
)	
VERIZON SOUTH, Inc.)	
Defendant/Respondent)	

This is to certify that I have caused to be served this day, one (1) copy of the Motion to Dismiss filed by Verizon South, Inc. ("Verizon") in the above referenced docket by placing a copy of same in the care and custody of the United States Postal Service, first class postage prepaid to the following Parties of Record:

VIA U.S. Mail:

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, S.C. 29211

Abby Matari, CEO/Corporate Development
FLATEL, Inc.
2300 Palm Beach Lakes Blvd.
Executive Center – Ste. 100
West Palm Beach, FL 33409



October 12, 2007
Columbia, South Carolina



Leonard G. Canalini
Manager – Wholesale Claims & Collections
240 East 38th Street Room 1707
New York, NY 10016
(212) 499-0470
len.g.canalini@verizon.com

Via Overnight Mail

August 10, 2007

Adri Solar, CFO
FLATEL Inc.
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 100
West Palm Beach, FL 33409

Re: Payment Default and Pending Discontinuance of Service – South Carolina

Dear Mr. Solar:

This letter serves as notice that FLATEL, Inc. ("FLATEL") is in default of its bill payment obligations in South Carolina under its interconnection agreement (the "Agreement") with Verizon South Inc. ("Verizon").

This default arises from FLATEL's failure to pay undisputed past due charges for resold services provided under the Agreement that were billed more than 30 days ago. FLATEL is now in default with respect to these undisputed charges in the amount of **\$257,482.80**. Attached please find account information current as of August 9, 2007.

Verizon sends this formal notice of payment default pursuant to Section 12 of the Agreement. To avoid further action by Verizon and to maintain its Verizon service arrangements under current business terms, FLATEL must cure its payment default by payment of **\$257,482.80** received on or before **September 12, 2007**. If FLATEL fails to pay its cure amount, then Verizon will implement its rights under the Agreement. Specifically, Verizon will suspend its acceptance and processing of FLATEL's service orders (except disconnects) and/or discontinue all services provided to FLATEL in South Carolina on or after **September 13, 2007**.

Verizon reserves all of its rights to exercise any or all of its cumulative remedies, and will continue to exercise any and all available legal remedies to collect payment for services rendered. Please contact me immediately to arrange payment to cure this breach of payment obligations.

Sincerely,

A handwritten signature in cursive script that reads "Leonard Canalini".

Len Canalini

FLATEL
August 10, 2007
(Page 2 of 2)

FLATEL*						
STATE	VERIZON TELEPHONE OPERATING COMPANY	SERVICE	CURRENT CHARGES	PAST DUE CHARGES	DISPUTES	TOTAL UNDISPUTED PAST DUE BALANCE
South Carolina	Verzion South Inc.	Resale	30,537.41	257,482.80	0.00	\$257,482.80

*Data current as of 8/9/2007

9 Billing and Payment; Disputed Amounts

- 9.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 9.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or (b) twenty (20) days after the date the statement is received by the billed Party. Payments shall be transmitted by electronic funds transfer.
- 9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section, Dispute Resolution.
- 9.4 Charges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.
- 9.5 Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.

14 Dispute Resolution

- 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
- 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.